IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-10-2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33510 of 2017

Rajkumar Saraf ... Petitioner

-vs-

1.The Reserve Bank of India,
6, Sansad Marg,
New Delhi – 110 001.

2.Indian Bank,
Corporate Office,
Screening Committee,
254/260, Avvai Shanmugham Salai,
Royapettah,
Chennai – 600 014.

3.Indian Bank,
by its Zonal Manager,
Zonal Office,
Legal & Recovery Cell,
18th Floor, Maker Tower-F,
Cuffe Parade,
Mumbai-400 005. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records of the proceedings, dated 22.11.2017, issued by the third respondent in ZO:MUM:LEG:275:2017-18, quash the same and to further direct the third respondent bank to resolve its demand before the NCLT, Mumbai.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
for M/s.Surana and Surana.

For Respondent 1 : Mr.C.Mohan,
for M/s.King and Patridge.

For Respondents 2 & 3 : Mr.P.V.Murlidhar

ORDER

This Writ Petition has been filed challenging the proceedings, dated 22.11.2017, issued by the third respondent, declaring the petitioner as a Wilful Defaulter.

2. The petitioner is a Promoter - Director of M/s.Zenith Computers Ltd. The company availed a loan from respondents 2 and 3 and, due to melting of business, there was some default committed by the petitioner. Despite the respondents calling upon the company to make OTS proposals for full and final settlement of all the dues, the amount was not paid. In the meanwhile, the petitioner was declared as a Wilful Defaulter. According to the petitioner, such a declaration is against the RBI Master Circular, dated 01.07.2015. The impugned order is challenged on the ground that no opportunity has been given to the petitioner. The petitioner stood as a guarantor. Therefore, the RBI's Master Circular, dated 01.07.2015, relied upon by the respondents, is not applicable to

the petitioner and he could not have been declared as a Wilful Defaulter.

3. A Counter Affidavit has been filed by the respondents, wherein, it is stated that the petitioner is a defaulter and he submitted an OTS proposal in the month of June,2016, only for the working capital liability and, thereafter, they did not pay any amount Therefore, the Screening Committee, vide its proceedings, dated 22.12.2016, recorded the act of wilful default after due deliberation and issued an order to classify M/s.Zenith Computers Ltd. and its Promoter - Director, namely, the petitioner as Wilful Defaulters under Clause 2.1.3(a) of the RBI Master Circular, dated 01.07.2015. The contention that no opportunity was given to the petitioner is denied.

4. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner, challenged the impugned order on two grounds. The first ground is that the petitioner being a guarantor, the RBI Master Circular is not applicable to declare him as a Wilful Defaulter. The second ground is that no opportunity has been given either by the Screening Committee or the Review Committee and, therefore, the impugned order is liable to be quashed. In support of his submissions, the learned Senior Counsel relied upon a decision of the Apex Court in State Bank of India v. Jah Developers Pvt. Ltd, reported in (2019) 6 SCC 787 and also a decision of a Division Bench of this Court in Senthil Arumugasamy v. Deputy General Manager, State Bank of India, 2021 SCC OnLine Mad 2899.

5. Learned counsel for the respondent would submit that the petitioner himself has offered OTS proposals and even after he has been declared as a Wilful Defaulter, he has come forward for settlement, which itself would show that proper opportunity was given to the petitioner. However, he would submit that in view of the decision of the Apex Court, as opportunity has not been given by the Review Committee, suitable orders may be passed. The learned counsel also submitted that this order may not have the effect on the proceedings initiated by the petitioner before NCLT.

6. I have heard the learned counsel for the parties and also perused the records.

7. The order impugned was passed on 22.11.2017, wherein it is stated that since the Screening committee has held the company and the Promoter - Director as Wilful Defaulters falling within the ambit of Clause 2.1.3(a) of the RBI's Master Circular, dated 01.07.2015, the order of the Screening Committee has been confirmed by the Review Committee, following the RBI Guidelines. In view of the same, it is informed that a decision has been taken to classify the petitioner as a Wilful Defaulter. The impugned order does not even indicate that any opportunity was given to the petitioner by the Review Committee. In this regard, the Apex Court, in the decision in State Bank of India v. Jah Developers Pvt. Ltd., referred to above, in Paragraph 21, has held that the First Committee must give its order to the borrower as soon as it is made. The borrower then can represent against such order within a period of 15 day to the

Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. The Division Bench of this Court, in Senthil Arumugasamy's case, cited supra, following the decision of the Apex Court in State Bank of India v. Jah Developers Pvt. Ltd., cited above, has held in Paragraph 24 as follows :

> *"24. However, only so much of what has been done, that goes against the grain of the Master Circular, requires to be undone since the initial steps had been duly taken and there does not appear to be any anomaly therein. Accordingly, the order impugned dated August 09, 2019 is set aside along with the decision of the Review Committee of March 16, 2019. The matter will now return to the position where the Identification Committee had considered the petitioner's defence and had rendered its view as reflected from the minutes of the meeting dated December 29, 2018. In view of the dictum in Jah Developers, it is the opinion of the Identification Committee that has now to be forwarded to the petitioner for the petitioner to be entitled to make a further representation against the same. The Review Committee will consider the further representation of the petitioner against the opinion rendered by the Identification Committee and pass a reasoned order after affording the petitioner an opportunity of hearing. Thus, it will be open to the State Bank to forward the views of the Identification Committee to the petitioner together with a further notice for the petitioner to make a representation against such views*

for the Review Committee to consider the same."

8. On perusal of the entire records and the counter affidavit, it is seen that there is no material to show that the order of the Screening Committee has been served on the petitioner enabling him to file a representation within 15 days to the Review Committee, as directed by the Apex Court, and that the Review Committee has passed a reasoned order, based on such representation. What is conveyed is only an order, declaring the petitioner as a Wilful Defaulter without reference to the order passed by the Review Committee. Such an order is not only against the RBI Master Circular, but also against the judgments of the Apex Court as well as this Court. On this ground alone, the impugned order is liable to be set aside.

9. The contention of the petitioner that the RBI Master Circular cannot be applied to guarantor has no legs to stand. In fact, the petitioner himself has admitted that he is the Promoter - Director of the company. Therefore, the contention that he is only a guarantor cannot be accepted. However, considering that the impugned order is in total violation of the RBI Master Circular as well as the judgments of the Apex Court and also this Court, the same is set aside. It is well open to the respondents 2 and 3 to take fresh steps against the petitioner as per RBI Master Circular, dated 01.07.2015, by giving him proper opportunity. This order is confined to the impugned order alone and not in

respect of any other proceedings initiated by the bank and also the defence taken by the respondents in other proceedings.

10. With the above observations, this Writ Petition is allowed. No costs. Consequently, the connected W.M.P.No.37015 of 2017 is closed.

Index : Yes/No 11-10-2022
Internet : Yes/No
Speaking/Non-speaking Order

dixit

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N.SATHISH KUMAR,J.

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